

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

TRIPLAY, INC. and TRIPLAY, LTD.,

Plaintiffs,

v.

WHATSAPP, INC.,

Defendant.

:  
:  
:  
:  
:  
:  
:  
:  
:

Civil Action No. 13-1703-LPS

**MEMORANDUM ORDER**

WHEREAS, Magistrate Judge Burke issued a 40-page Report and Recommendations (the “Report”) (D.I. 52), dated April 28, 2015, recommending that Defendant Whatsapp, Inc.’s (“Defendant”) Motion to Dismiss for Failure to State a Claim (“Motion to Dismiss”) (D.I. 7) be granted as to claim 12 of U.S. Patent No. 8,332,475 (the “’475 patent”);

WHEREAS, on May 15, 2015, Plaintiffs Triplay, Inc. and Triplay, Ltd. (“Plaintiffs”) objected to the Report (“Objections”) (D.I. 56), and specifically objected to (1) the Report’s conclusion that claim 12 of the ’475 patent was directed to patent-ineligible subject matter and, thus, its recommendation that the Motion to Dismiss be granted as to claim 12; and (2) the Report’s findings that claims 1 and 12 of the ’475 patent are drawn to an abstract idea;

WHEREAS, on May 15, 2015, Defendant also objected to the Report (“Defendant’s Objections”) (D.I. 55), and specifically objected to (1) the Report’s conclusion that claim terms in claim 1 must be construed before patent eligibility of that claim could be determined; and (2) the Report’s conclusion that the other claims of the ’475 patent could not be assessed given the parties’ lack of attention to them;

WHEREAS, on June 3, 2015, Defendant responded to the Objections (D.I. 60), arguing that the Report “correctly finds that claims 1 and 12 are directed to the abstract idea of converting and forwarding messages” and that “the steps of claim 12 add nothing inventive” (*id.* at 6, 10);

WHEREAS, on June 3, 2015, Plaintiffs responded to the Defendant’s Objections (D.I. 61);

WHEREAS, the Court has considered Defendant’s Motion to Dismiss *de novo*, as it presents case-dispositive issues, *see* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3), and has further reviewed all of the pertinent filings;

NOW THEREFORE, IT IS HEREBY ORDERED that:

1. Plaintiffs’ Objections (D.I. 56) are OVERRULED, Defendant’s Objections (D.I. 55) are OVERRULED, Judge Burke’s Report (D.I. 52) is ADOPTED in all respects EXCEPT his recommendation to deny without prejudice to renew the Motion to Dismiss all claims other than claim 12, and Defendant’s Motion to Dismiss (D.I. 7) is GRANTED as to claim 12 of the ’475 patent and remains PENDING as to all remaining claims of the ’475 patent, including claim 1.

2. Given the detailed reasoning provided in the Report, and given that the parties have not raised any arguments that are not adequately addressed in Judge Burke’s Report, the Court finds it unnecessary to address Defendant’s Motion to Dismiss (D.I. 7), Plaintiff’s Objections (D.I. 56), or Defendant’s Objections (D.I. 55) any further, as to claim 12 of the ’475 patent.

3. As to claim 1 of the ’475 patent, Plaintiffs’ Objections (D.I. 56) are OVERRULED, as the Court agrees with the reasoning and ultimate conclusion of the Report that claim 1 is directed to an abstract idea.

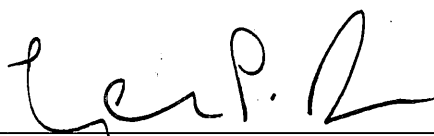
4. The Court also agrees with the Report that there are issues of claim construction that must be briefed and resolved before Defendant may renew its Motion to Dismiss as to claim

1. Thus, IT IS FURTHER ORDERED that (1) the parties shall submit letter briefs on or before August 14, 2015, not to exceed five (5) pages, addressing any claim construction issues, or lack thereof, that the Court should address before Defendant may renew its Motion to Dismiss as to claim 1; and (2) the parties shall submit responsive letter briefs on or before August 17, 2015, not to exceed three (3) pages, responding to the other party's arguments.

5. IT IS FURTHER ORDERED that (1) Plaintiff shall submit a letter brief on or before August 13, 2015, not to exceed three (3) pages, addressing whether any of the dependent claims of the '475 patent include limitations that would make it inappropriate to analyze claims 1 and 12 as representative claims for purposes of deciding Defendant's Motion to Dismiss; (2) Defendant shall file a responsive letter brief on or before August 16, 2015, not to exceed five (5) pages; and (3) Plaintiff shall file a reply letter brief on or before August 17, 2015, not to exceed two (2) pages.

6. The parties shall be prepared to address all of the pending issues, including those to be addressed in the briefing ordered today, at the hearing to be held on August 18.

August 10, 2015  
Wilmington, Delaware

  
HON. LEONARD P. STARK  
UNITED STATES DISTRICT JUDGE